

# United States District Court District of Massachusetts

NKEM ECHEM,  
Petitioner,

V.

CIVIL ACTION NO. 05-10245-JLT

ALBERTO GONZALES,<sup>1</sup>  
ATTORNEY GENERAL,  
Respondent.

## *REPORT AND RECOMMENDATION ON MOTION TO DISMISS (#6)*

COLLINGS, U.S.M.J.

No opposition having been filed within the time prescribed by L.R. 7.1(B)(2), I RECOMMEND that the Motion to Dismiss (#6) be ALLOWED.

Quite apart from the motion to dismiss being unopposed, the motion is meritorious. The Board of Immigration Appeals denied petitioner's appeal from the order of deportation on January 31, 2002. Petitioner failed to appeal that

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The petition was filed on February 8, 2005 against "John Ashcroft, Attorney General." Alberto Gonzales succeeded him on February 14, 2005. Pursuant to Rule 25(d)(1), Fed. R. Civ. P., his successor is now the named defendant.

decision to the First Circuit pursuant to 8 U.S.C. §§ 1252(b)(1) and (b)(2). In these circumstances, the petitioner has “procedurally defaulted” and cannot now obtain relief by petitioning for a writ of habeas corpus. *Rivera-Martinez v. Ashcroft*, 389 F.3d 207, 210 (1 Cir., 2004). *See also Hinds-Williams v. INS*, 2004 WL 2935798 \* 1 (fn. 2) (D. Mass., 2004)

Accordingly, I RECOMMEND that the Motion to Dismiss (#6) be ALLOWED and that JUDGMENT enter DISMISSING the Petition.

The parties are hereby advised that pursuant to Rule 72, Fed.R.Civ.P., any party who objects to these recommendations must file a specific written objection thereto with the Clerk of this Court within 10 days of the party’s receipt of this Report and Recommendation. The written objections must specifically identify the portion of the recommendations, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health and Human Services*, 848 F.2d 271 (1 Cir., 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1 Cir., 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1 Cir., 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1 Cir., 1982); *Park Motor*

*Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1 Cir., 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Robert B. Collings

ROBERT B. COLLINGS

United States Magistrate Judge

March 28, 2005.